Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1999

MICHAEL WAYNE MEEKER,
PETITIONER

VS.

GARY L. JOHNSON, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
INSTITUTIONAL DIVISION,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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COUNSEL OF RECORD

QUESTION PRESENTED

If a trial counsel's specific deficiency in performance does not itself implicate a federal constitutional right, but the defendant otherwise shows prejudice under Strickland v. Washington, 466 U.S. 668 (1984) and Lockhart v. Fretwell, 506 U.S. 364 (1993), is ineffective assistance of counsel shown? And if the claimed deficiency is the failure to move for a separate punishment hearing under state law, must the defendant show that, had he received a punishment hearing, his sentence would have been significantly less harsh than that imposed?

LIST OF PARTIES

The Petitioner, Michael Wayne Meeker, has been represented throughout this appeal by the undersigned counsel.

The Respondent, Hon. Gary Johnson, Director, Texas Department of Criminal Justice, Institutional Division, is represented by Hon. Ross Rayburn, Assistant Attorney General, State of Texas.

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CITATIONS TO THE REPORTS

The order of the Court of Appeals denying Petitioner's request for certificate of appealability appears as Meeker v. Johnson, No. 99-40132 (5th Cir. September 16, 1999) and is not published. The order of the Court denying Petitioner's motion for reconsideration appears as Meeker v. Johnson, No. 99-40132 (5th Cir. November 5, 1999) and is not published.

JURISDICTION

The Court of Appeals entered its judgment and order denying Petitioner's request for certificate of appealability on September 16, 1999. Petitioner subsequently filed his motion for leave to file motion for reconsideration out of time. The Court of Appeals granted this request, but denied the motion for reconsideration, on November 5, 1999. Jurisdiction is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides, in pertinent part:

"In all criminal prosecutions, the accused shall. . . have the Assistance of Counsel for his defence."

STATEMENT OF THE CASE

Petitioner was on a four year term of probation in Texas state court for the felony offense of possession of a firearm on premises licensed for alcoholic beverages. This was deferred probation under Texas law, where revocation of probation results in an adjudication of guilt on the original charge. The trial court may then sentence the defendant to any punishment within the range authorized for the original offense. Once the trial court adjudicates guilt, the defendant is entitled to a separate punishment hearing. TEX. CODE CRIM. PROC. art. 42.12 §5.

In this case, the State moved to adjudicate guilt based on an alleged violation of probation, commission of another offense. After hearing evidence, the trial court adjudicated guilt and pronounced sentence (eight years imprisonment) at the same time without conducting a punishment hearing. This was reversible error under Texas law, Issa v. State, 826 S.W.2d 159 (Tex. Crim. App. 1992), assuming the error was preserved by objection, if not at the hearing itself, then at least by filing a motion for new trial. Id.

Defense counsel in this case failed to object at either point; thus Petitioner alleged in his writ application under 28 U.S.C. §2254 that this deficiency constituted ineffective assistance of counsel.

The basis for jurisdiction in the federal District Court is 28 U.S.C. §2254 (a).

REASONS FOR GRANTING THE WRIT

The order of the Court of Appeals denying the certificate of appealability holds, without elaboration, that Petitioner failed to show entitlement to a certificate of appealability because he did not substantially show denial of a federal right. One assumes that the Court of Appeals followed the District Court's reasoning in this matter.

The United States Magistrate and the District Court cited two flaws in Petitioner's argument: he did not have a federal right to a state punishment hearing and to show prejudice from failure to obtain a punishment hearing, Petitioner would have to show that he would have received a significantly less harsh sentence. See Spriggs v. Collins, 993 F.2d 85, 88 (5th Cir. 1993).

The first cited flaw is simply incorrect. Strickland v. Washington, 466 U.S. 668 (1984) requires a showing of deficient performance, but this authority does not require the mistake itself to implicate a federal right. The correct analysis is that the range of mistakes is very wide; the limiting factor is prejudice. If prejudice is shown, the federal constitutional right to assistance of counsel is implicated.

To show prejudice, a defendant must show that, but for counsel's errors, the result of the proceeding would have been different—that counsel's errors were so serious as to deprive the defendant of a fair

trial, a trial whose result is reliable. Strickland, 466 U.S. at 687. Unreliability or unfairness does not result unless the deficient performance deprives the defendant of a substantive or procedural right to which the law entitles him. In other words, the result of the proceeding must have been rendered fundamentally unfair or unreliable. Lockhart v. Fretwell, 506 U.S. 364, 369-372 (1993). There is no further and more specific test requiring that the mistake implicate a federal right.

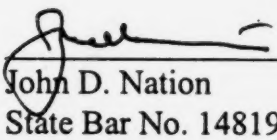
The second alleged flaw was that Petitioner was unable to show that he would have received a significantly less harsh sentence. This test applies only if the defendant in fact received a punishment hearing but claims that his lawyer ineffectively represented him there. If the defendant did not receive a punishment hearing and had no opportunity to educe punishment type evidence, how could he ever show that he would have received a significantly less harsh sentence?

The true analysis of prejudice should be as follows: Petitioner was deprived of an important procedural right under Texas law to present evidence if favor of a lesser sentence to the court. Because he did not have the opportunity to present evidence, the result of the proceeding was unreliable because the trial court did not have before it

and therefore did not consider any evidence concerning the sentencing issue.

WHEREFORE, Petitioner prays that the Court grant the petition for certiorari and remand the cause to the Court of Appeals with instructions to grant the certificate of appealability.

Respectfully submitted,



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COUNSEL OF RECORD

APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 99-40132
USDC NO. 4:97-CV-146

MICHAEL WAYNE MEEKER,

PETITIONER—APPELLANT

VERSUS

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION,

RESPONDENT—APPELLEE

Appeal from the United States District Court
For the Eastern District of Texas

ORDER:

Michael Wayne Meeker has applied for a certificate of appealability (COA) to appeal the district court's dismissal of his petition for habeas relief. To obtain a COA, a petitioner must make a substantial showing of the denial of a constitutional right. See 28 U.S.C. §2253 (c) (2). Meeker asserts that counsel rendered ineffective

assistance by not requesting that the trial court conduct a separate punishment hearing and by not moving for a new trial. Meeker has failed to make a substantial showing of the denial of a constitutional right. Accordingly, his request for COA is DENIED.

JACQUES L. WIENER, JR.
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

MICHAEL WAYNE MEEKER

VS. § CIVIL ACTION NO. 4:97cv146

DIRECTOR, TDCJ - ID JUDGE PAUL BROWN

§

REPORT AND RECOMMENDATION

OF UNITED STATES MAGISTRATE JUDGE

The Petitioner, appearing through his attorney, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 and § 2254.

The case was referred pursuant to 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to the United States Magistrate Judge, for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Procedural Background and History

The Petitioner was indicted for the third degree felony offense of unlawfully carrying a firearm, namely, a handgun, on premises li-

censed and issued a permit by the State of Texas for the sale and service of alcoholic beverages. On March 14, 1991, the Petitioner pled guilty to the charge in the 362nd District Court of Denton County, Texas, in Cause No, F-90-841-D, styled *The State of Texas v. Michael Wayne Meeker.* The trial court, however, after finding the evidence sufficient to substantiate the plea, deferred further proceedings and placed the Petitioner on probation for four (4) years. On April 30, *1993, the* Petitioner's guilt was adjudicated and the trial court assessed a sentence of eight (8) years in the Texas Department of Criminal Justice, Institutional Division.

The Petitioner appealed his conviction and the Court of Appeals for the Second District of Texas, in an unpublished opinion, affirmed his conviction. *Meeker v. State,* No. 2-93-233-CR (Tex. App. — Fort Worth June 15, 1994, pet. ref'd.)(not designated for Publication). The Petitioner's petition for discretionary review, P.D.R. 847-94, was refused by the Texas Court of Criminal Appeals on October 12, 1994.

The Petitioner filed a state writ of habeas corpus on May 21, 1996. On July 31, 1996, The Texas Court of Criminal Appeals denied the application without written order.

Petitioner's Allegation

The Petitioner alleges he received ineffective assistance of counsel for the following reasons:

1. His trial attorney failed to object to the trial court's decision to adjudicate guilt and assess a sentence without a punishment hearing; and

2. His trial attorney failed to raise the lack of a punishment hearing in a motion

for new trial and preserve the error for appellate review.

Standard of Review

Under the 1996 amendments to the federal habeas corpus statute embodied in the Antiterrorism and Effective Death Penalty Act of 1996 ("the Act"), which took effect April 24, 1996, a state prisoner may not obtain relief with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim-

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of
>
> the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d)(West 1996). Further, in review of a state prisoner's federal habeas petition, "a determination of a factual issue made by a State court shall be presumed to be correct," and the petitioner shall have the burden of rebutting the presumption by clear and convincing evidence." § 2254(e)(1).

Moreover, the Texas Court of Criminal Appeals denial of the Petitioner's state application without written order constitutes an adjudication of the claims on the merits. *See Blankenship v. Johnson,* 106 F.2d 1202, 1204 (5th Cir. 1997)(if Court of Criminal Appeals denies state habeas application "without written order," that denial constitutes an "adjudication on the merits"),
withdrawn on other grounds, Blankenship v. Johnson, 118 F.2d 312 (5th Cir. 1997). Therefore, this

Court cannot grant habeas relief unless it determines under 28 U.S.C. § 2254(d) that the state court's determination involved an unreasonable application of the law to the facts. *Moore v. Johnson, 101* F.3d 1069, 1075-76 (5th Cir. 1996)(citing *Drinkard v. Johnson,* 97 F.3d 767-68 (5th Cir. 1996), *cert. denied,* 117 S.Ct. 1114 (1997). To find that it was an unreasonable application of the law to the facts, this court must find that the "'state court decision is so clearly incorrect that it would not be debatable among reasonable jurists.'" Id. (citing

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Drinkard, 97 F.3d at 769).

Discussion

The Petitioner's federal application concerns the State procedural requirement for a separate punishment hearing in TEX. CODE CRIM. PROC. ANN. art. 42.12, § 5(b)(Vernon 1991). He contends that counsel was ineffective for failing to object, during the adjudication proceedings, to the lack of a separate punishment hearing and for failing to raise the same issue in a motion for new trial.

A state prisoner seeking federal court review of his conviction pursuant to 28 U.S.C. § 2254 must assert a violation of a federal constitutional right. *Lawrence v. Lensing,* 42 F.3d 255,258 (5th

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Cir. 1994); *Gray v. Lynn,* 6 F.3d 265,268 (5th Cir. 1993); *Lowery v. Collins,* 988 F.2d 1364, 1367 (5th Cir. 1993). Federal habeas corpus relief will not issue to correct errors of state constitutional, statutory, or procedural law, unless a federal issue is also presented. *Estelle v. McGuire,* 502 U.S. 62, 64-68, 112 S.Ct. 475, 480 (1991). The Fifth Circuit has consistently held "it is not a federal habeas court's function to review a state's interpretation of its own law." *Weeks v. Scott,* 55 F.3d 1059, 1062 (5th Cir. 1995). Moreover, "federal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension." *Smith v. Phelps,* 455 U.S. 209, 221,102 S.Ct. 940, 948 (1982). Thus, the issue before the court is not whether the trial court properly applied state-law procedures during the Petitioner' s trial, but whether his constitutional rights were violated during the process.

Clearly, the Petitioner had no constitutional right to a bifurcated trial, in the form of separate guilt and punishment hearings. *See Spencer v. Texas,* 385 U.S. 554, 568, 87 S.Ct. 648, 656 (1967)(stating that a bifurcated trial system has never been compelled as a matter of constitutional law, or even as a matter of federal procedure"). The Fifth Circuit has held, in line with *Spencer,* that a "defendant must make an extremely strong showing before a federal court will find a denial of the 'fundamental elements of fairness in a criminal trial,' guaranteed

by the due process clause."

Blankenship v. Estelle, 545 F.2d 510, 516 (5th Cir. 1977)(reversed *on other grounds), quoting Spencer,* 385 U.S. at 563-64, 87 S.Ct. at 653; *see also, United States v. Milne,* 498 F.2d 329, 330 (5th Cir. 1974)(no right to a bifurcated trial on issues of guilt or innocence and insanity at the time of the offense), *cert. denied,* 419 U.S. 1123.95 S.Ct. 808 (1975).

The Petitioner has couched his claim in terms of ineffective assistance of counsel: he received ineffective assistance of counsel because his counsel failed to object to not having a

punishment hearing as required by state procedure. The Petitioner contends that his sentence would have been less than the eight years imposed by the trial court had trial counsel objected to the lack of a punishment hearing during the adjudication proceedings or in a motion for new trial. The Supreme Court has addressed the issue of what a petitioner must prove to demonstrate an actual ineffective assistance of counsel claim. *Strickland v. Washington,* 466 U.S. 668, 104 S.Ct. 2052 (1984). In order to show that counsel was ineffective a petitioner must demonstrate:

> first.., that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings it cannot be said that the conviction or death sentence resulted in a breakdown of the adversarial process that renders the result unreliable.

Strickland, 466 U.S. at 687, 104 S.Ct. at 2064. In order to demonstrate the second prong of the above-stated test, a petitioner must demon-

strate that counsel's deficient performance so prejudiced the defense that petitioner was denied a fair and reliable trial. *Lockhart v. Fretwell,* - U.S. -, 113 S.Ct. 838 (1993). A showing of prejudice in the non-capital context requires petitioner to demonstrate "that but for counsel's errors the defendant's non-capital sentence would have been significantly less harsh." *Spriggs v. Collins,* 993 F.2d 85, 88 (5th Cir. 1993). Factors to consider in determining prejudice include: 1) the actual amount of the sentence imposed, 2) the minimum and maximum sentence possible, 3) the relative placement of the sentence actually imposed within the allowable range, and 4) mitigating and aggravating factors that were considered by the sentencer. *Id.* A reviewing court "must strongly presume that trial counsel rendered adequate assistance and

that the challenged conduct was the product of a reasoned trial strategy." *Wilkerson v. Collins,* 950 F.2d 1054, 1065 (5th Cir. 1992).

The burden of proof in a habeas corpus proceeding attacking the effectiveness of trial counsel is upon petitioner, who must demonstrate counsel's ineffectiveness by a preponderance of the evidence. *Martin v. Maggio,* 711 F.2d 1273 (5th Cir. 1983). In determining the merits of an alleged Sixth Amendment violation, a court "must be highly deferential" to counsel's conduct. *Strickland* 466 U.S. at 687, 104 S.Ct. at 2064. Courts must recognize "the tendency, when all else fails, to blame the lawyer." *United States v. Faubion,* 19 F.3d 226, 232 (5th Cir. 1994). The acuity of hindsight is not the proper lens to view alleged errors on the part of counsel. *Id.*

Although the ultimate question of whether counsel's performance is a mixed question of law and fact, state court findings of fact made in the course of deciding an ineffectiveness claim are entitled to a presumption of correctness under 28 U.S.C. § 2254(d) if supported by the record. *Loyd v. Smith,* 899 F.2d 1416, 1425 (5th Cir. 1990). A hearing by affidavit is sufficient to invoke the presumption of correctness. *Buxton v. Lynaugh,* 879 F.2d 140, 144 (5th Cir.), *cert. denied* - U.S. -, 110 S.Ct. 3295 (1990).

The undersigned entered a Report on April 16, 1998, recommending the petition be denied. On July 15, 1998, the Report was with-

drawn and the parties were ordered to submit supplemental briefs on the issue of ineffective assistance of counsel. After further review, the undersigned concludes that the original Report was correct: the Petitioner cannot show that he received ineffective assistance of counsel.

The Petitioner's claim is based on the holding of the Texas Court of Criminal Appeals in *Issa v. State,* 826 S.W.2d 159, 161 (Tex. Crim. App. 1992), that "when a trial court finds that an accused

has committed a violation as alleged by the State and adjudicates a previously deferred finding of guilt, the court must then conduct a second phase to determine punishment." It is apparent from the record in this case that such a punishment hearing was not held. An intermediate Texas appellate court has held that if punishment type witnesses are presented during the revocation hearing, a separate punishment hearing is unnecessary. *Faerman v. State,* 966 S.W.2d 843 (Tex. App.-Houston [14th Dist.] 1998). The Petitioner's attorney did not present punishment type evidence at the revocation hearing. Further, the error was not preserved for appellate review by an objection at the revocation and sentencing hearing itself or by a motion for new trial. Thus, the procedural requirements were not met.

However, as stated before, this is a procedural claim and such procedural claims do not merit federal habeas relief. The Petitioner framed claim as one of ineffective assistance of counsel, but this claim is also without merit. The Petitioner cannot show that he was prejudiced by counsel's failure to object to the fact that no punishment hearing was held. The Petitioner's guilt was adjudicated for a third degree felony offense which subjected him to imprisonment "for any term of not more than 10 years or less than 2 years." TEX. PENAL CODE ANN. § 12.34(a)(1)(Vernon 1991). Since his sentence of 8 years was within the statutory limits, the Petitioner cannot show that but for

counsel's failure to object, his sentence would have been lower. The Petitioner has made only conclusory allegations without providing evidence to support his position. "Mere conclusory statements do not raise a constitutional issue in a habeas case." *Schlang v. Heard,* 691 F.2d 796, 799 (5th Cir.1982)(citations omitted). The Petitioner has not provided any information about what counsel could have done that would have resulted in the trial court assessing a lesser sentence.

Further, "wide discretion is accorded to a state trial court's sentencing decision and claims arising out of the decision are generally not constitutionally cognizable. Relief may be required where the petitioner is able to show that the sentence imposed exceeds or is outside the statutory limits, or is wholly unauthorized by law." *Haynes v. Butler,* 825 F.2d 92', 923-24 (5th Cir. 1987), *cert. denied,* 484 U.S. 1014, 108 S.Ct. 717 (1988). "If a sentence is within the statutory limits, the petitioner must show that the sentencing decision was wholly devoid of discretion or amounted to

an 'arbitrary or capricious abuse of discretion,' *United States v. Garcia,* 693 f.2d 412, 415 (5th Cir.

1982), or that an error of law resulted in the improper exercise of the sentencer's discretion and thereby deprived the petitioner of his liberty.'" *Butler,* 825 F.2d at 924.

As noted above, the Petitioner was sentenced to 8 years, which is within the statutory limits for a third degree felony offense. The Petitioner therefore must show the trial court's decision was arbitrary or an abuse of discretion. He has failed to do so. The Petitioner has simply made conclusory allegations. Habeas relief cannot rest on conclusory allegations.

The Petitioner does not have a constitutional right to a bifur-

cated trial, he did not receive ineffective assistance of counsel, and the trial court did not abuse its discretion in sentencing him to 8 years. Further, the state court's decision on the Petitioner's state application for writ of habeas corpus did not involve an unreasonable application of the law to the facts. This claim is without merit.

Recommendation

The petition for a writ of habeas corpus should be denied.

Objections

Within ten (10) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636 (b)(1)(C).

Failure to file written objections to the proposed findings and recommendations contained within this report within ten days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual or legal findings accepted or adopted by the district court except on grounds of plain error. *Douglas v. United Services Automobile Association,* 79 F.3d 1415 (5th Cir. 1996).

SIGNED this 8th day of December, 1998.

ROBERT W. FAULKNER
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 99-40132

MICHAEL WAYNE MEEKER
Petitioner—Appellant

v.

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION
Respondent—Appellee

Appeal from the United States District Court for the Eastern District of Texas, Sherman

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Before POLITZ, JOLLY and WEINER, Circuit Judges

IT IS ORDERED that Appellant's motion for leave to file his motion for reconsideration out of time is GRANTED. IT IS FURTHER ORDERED that the motion for reconsideration of this Court's order filed September 16, 1999 is denied.

ENTERED FOR THE COURT:

JACQUES L. WEINER, JR.
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

MICHAEL WAYNE MEEKER)

CIVIL ACTION 4:97-CV-146

VS.) JUDGE PAUL BROWN

DIRECTOR, TDCJID)

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS.

Petitioner, an inmate proceeding pro se, brought this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2254.

The court heretofore referred this matter to the Honorable Robert W. Faulkner, United States Magistrate Judge, Sherman, Texas, for consideration pursuant to applicable laws and orders of this court. The court has received and considered the Report of the United States Magistrate Judge filed pursuant filed pursuant to such order, along with the record, pleadings and all available evidence. The Petitioner has submitted objections to the Report. This requires a de novo review of the objections in relation to the pleadings and the applicable law. See 28 U.S.C. §636 (b) (1) (C).

In his objections, the Petitioner reasserts his allegations. He also asserts that he is not claiming a federal right to a state punishment hearing, nor a procedural violation in the failure to hold a punishment hearing. Instead, the Petitioner claims ineffective assistance of counsel for his attorney's failure to object to the absence of a punishment hearing. This failure on the part of counsel, the Petitioner argues, "deprived [him] of the opportunity to put on evidence in support of a sentence below the maximum." The Petitioner was facing 2 to 10 years imprisonment and was sentenced to 8 years, which is below the maximum. In order to show ineffective assistance of counsel, the Petitioner must show his counsel's performance was deficient and he suffered prejudice. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). A showing of prejudice in the non-capital context requires the Petitioner to demonstrate that "but for counsel's errors the defendant's non-capital sentence would have been significantly less harsh." Spriggs v. Collins, 993 F.2d 85, 88 (5th Cir. 1993). The Petitioner has not alleged what his counsel would have done and has not shown that "there is a reasonable probability that but for counsel's errors the prison sentence imposed by the trial court would have been significantly less harsh." Id. at 90. The Petitioner has not shown prejudice. The objections are without merit.

Accordingly, the objections are OVERRULED, the findings of fact and conclusions of law of the Magistrate Judge are correct and the

Report of the Magistrate Judge is ADOPTED. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations. The order referring this case to the Magistrate Judge is hereby VACATED.

Signed this 7 day of January, 1999.

PAUL BROWN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

MICHAEL WAYNE MEEKER)

CIVIL ACTION 4:97-CV-146

VS.) JUDGE PAUL BROWN

DIRECTOR, TDCJID)

FINAL JUDGMENT

This action came on before the Court, Honorable Paul Brown, District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered, it is

ORDERED AND ADJUDGED that the above styled Petition for Writ of Habeas Corpus is DENIED. All motions by either party not previously ruled on are hereby DENIED.

SIGNED this 7 day of January, 1999.

PAUL BROWN
UNITED STATES DISTRICT JUDGE